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U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re John S. Fischer

Serial No. 74/590,808

E. Michael Byorick of Duft, Graziano & Forest for John S. Fischer.

Susan K. Leslie, Trademark Examining Attorney, Law Office 104 (Sidney Moskowitz, Managing Attorney).

Before Simms, Hanak and Hairston, Administrative Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

An application has been filed by John S. Fischer to register the mark AIR CONTROL SCIENCE for "conducting feasibility studies, evaluation, consultation, and engineering in the field of dust collection systems" and "construction, installation, and maintenance of dust collection systems".¹

Registration has been finally refused under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the

¹Application Serial No. 74/590,808 filed October 26, 1994, and based on a bona fide intention to use the mark in commerce.

basis that, when used in connection with applicant's services, the mark is merely descriptive of them.

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested. We reverse the refusal to register.

The Examining Attorney maintains that the mark AIR CONTROL SCIENCE is merely descriptive of applicant's services because it immediately conveys to prospective purchasers information concerning the nature and purpose of the services. In particular, the Examining Attorney states:

The term air control describes the purpose of a dust collection system, which is air quality control. The addition of the term science serves to describe the scope of the services, that they relate to the technology itself, not any specific component.
(Final Office action, p. 1.)

According to the Examining Attorney, "[t]he term AIR CONTROL SCIENCE literally means the science of controlling air." (Brief, p. 5).

In support of the refusal to register, the Examining Attorney has made of record a dictionary definition of the word "science". In addition, as requested by the Examining Attorney, we judicially notice from the Dictionary of Architecture & Construction (1993), the definition of the term "dust collector":

An accessory device used to prevent dust, which a tool or machine produces, from escaping into surrounding air; suction forces the dust-laden air into a bag or

chamber, where it is collected.

The Examining Attorney also conducted a search of the Mead Data Central Nexis data base for stories containing the term "air control." Two excerpts which the Examining Attorney maintains are relevant are set forth below:

Air control: air conditioning, purifying and cleaning. "Air conditioning can be extremely effective, and decreasing humidity can be very helpful in getting rid of dust mites and mold, two of the major in-home allergens," says Dr. Montanaro. (Prevention, September, 1993).

AIR CONTROL Company supplies air quality control technologies and systems for broad range of market segments, including power generation, incineration and industrial applications. (Electric Light & Power, November, 1994).

Also, the Examining Attorney made of record copies of three patents which she maintains show that air control devices can control the flow of dust, rendering AIR CONTROL SCIENCE descriptive of services relating to dust collection systems.

Finally, in support of the refusal to register, the Examining Attorney relies on applicant's disclaimer of the term AIR CONTROL SCIENCE in a companion application for the mark AIR CONTROL SCIENCE and design for services identical to those herein.

Applicant has submitted the declaration of Gary Tooker, a professional engineer. Mr. Tooker is an employee of applicant and has extensive experience in the field of dust emission control. According to Mr. Tooker, "air control" is

not a commonly used term to describe dust collection systems or services pertaining thereto.

Further, applicant argues that "air control" as used in the evidence submitted by the Examining Attorney refers to devices which control the volumetric flow of air, not systems which collect dust.

With respect to the disclaimer of AIR CONTROL SCIENCE in its companion application, applicant states that it agreed to the disclaimer simply to gain allowance of the application, and that the disclaimer should not be considered an admission of descriptiveness.

A mark is considered to be merely descriptive of goods or services, within the meaning of Section 2(e)(1) of the Trademark Act, if it forthwith conveys an immediate idea of the ingredients, qualities, characteristics or features thereof or if it directly conveys information regarding the nature, function, purpose or use of the goods or services. See *In re Abcor Development Corp.*, 616 F.2d 525, 200 USPQ 215, 217-18 (CCPA 1978). Moreover, in order to be descriptive, the mark must immediately convey information as to the ingredients, qualities or characteristics of the goods or services with a "degree of particularity." *Plus Products v. Medical Modalities Associates, Inc.*, 211 USPQ 1199, 1204-05 (TTAB 1981); *Holiday Inns, Inc. v. Monolith Enterprises*, 212 USPQ 949,952 (TTAB 1981); *In re TMD Corp. of the Americas*, 200 USPQ 57, 59 (TTAB 1978); and *In re Diet Tabs, Inc.*, 231 USPQ 587, 588 (TTAB 1986).

Applying these principles to the evidence of record, and notwithstanding the disclaimer of AIR CONTROL SCIENCE in applicant's companion application, we conclude that AIR CONTROL SCIENCE has not been shown to be merely descriptive of applicant's services. We are not persuaded by the patents and Nexis evidence that the relevant purchasers of applicant's services perceive "air control" to mean the control or collection of dust. In the Nexis excerpts and one of the patents, "air control" appears to refer to devices which control the volumetric flow of air, and not systems which control or collect dust. In the remaining Nexis excerpt, "air control" refers to the use of air conditioning to eliminate dust mites and mold. Moreover, the word "science" is a very broad term which does not convey an immediate idea of the features or characteristics of applicant's services. In short, AIR CONTROL SCIENCE is an ambiguous term, and a modicum of thought is necessary in order to determine therefrom that applicant's services involve dust collection systems. In reaching this conclusion, we note that there is no evidence in this record that AIR CONTROL SCIENCE is used in a descriptive manner by the trade or the press in connection with dust collection systems.

Decision: The refusal to register is reversed.

Ser No. 74/590,808

R. L. Simms

E. W. Hanak

P. T. Hairston
Administrative Trademark
Judges, Trademark Trial and
Appeal Board

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